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SUBJECT: SRI LANKA: INDEPENDENT COMMISSIONS IN LIMBO
AWAITING CONSTITUTIONAL COUNCIL

REF: COLOMBO 242

Classified By: Ambassador Jeffrey J. Lunstead. Reasons: 1.4(b,d)

¶1. (C) Summary: Political in-fighting, spearheaded by the Sinhalese nationalist Janatha Vimukthi Peramuna (JVP), is hindering formation of the Constitutional Council, the multi-partisan body empowered to nominate members to independent watchdog authorities like the Human Rights Commission (HRC), Public Service Commission, the Judicial Service Commission and the National Police Commission (NPC). Without the Constitutional Council, these agencies, set up to monitor government abuse of authority, are unable to appoint new members--and thus perform their crucial watchdog role--as their Commissioners' terms expire. This has led to the accusation that the Government of Sri Lanka (GSL) may be using the partisan dispute over appointments to the Constitutional Council as a pretext to hamstring these independent agencies. End summary.

Constitutional Council: No Signs of Life

¶2. (SBU) The Constitutional Council, empowered to appoint members of nine independent agencies, has been in rigor mortis after its members' terms expired in March 2005. Without the Constitutional Council, as the terms of members of such agencies as the Public Service Commission, the National Police Commission and the Judicial Service Commission expire, no new Commissioners can be named--rendering these important watchdog authorities toothless, able to perform only limited administrative functions. (The Election Commission is a special case. When the incumbent Commissioner's term expired, the Government addressed the problem by refusing to allow him to retire.) The latest casualty of this bureaucratic paralysis is the Human Rights Commission (HRC), whose members' terms expired on April 3. (As reported reftel, HRC Chairperson Radhika Coomaraswamy will join the United Nations as Special Representative for Children and Armed Conflict on April 15.)

13. (C) Internal politics--laced with heavy overtones of communalism--underpins the Constitutional Council morass. The Council's fixed members include the Prime Minister, the Speaker of Parliament, and the Leader of the Opposition. Other members are nominated from the local Tamil and Muslim communities, as directed by the Prime Minister and Opposition Leader. The sixth and final member, according to the Constitution, must be nominated by unspecified "minority parties." The Marxist nationalist Janatha Vimukthi Peramuna (JVP) argues that as the third largest party in Parliament, it--and not the pro-LTTE Tamil National Alliance--should have the right to make that nomination. According to the JVP and its ally, the Buddhist monk-led Jathika Hela Urumaya (JHU), because the Prime Minister and Opposition Leader have already nominated representatives from the minority Tamil and Muslim communities, the majority Sinhalese should have the right to nominate a member as well. The TNA's position, on the other hand, is that since the JVP contested the 2004 general elections on the ruling party's ticket, it counts as part of the governing coalition and thus is not a "minority" party. (Note: The JVP left the governing coalition last June. The President has the authority to determine who has the right to nominate the sixth member, but so far has shown no wish to exercise it.)

Human Rights Commission Can't Receive Complaints

14. (SBU) With no new Commissioners appointed to replace those whose terms have expired, the 10-year-old Human Rights Commission (HRC) is now unable to accept or investigate complaints of violations. The HRC's ten regional offices and

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two sub-offices will continue administrative operations without commissioners, their employees receiving government salaries, but will lack the full authority accorded the Commissioners. Human rights activists and organizations, including Amnesty International, have publicly expressed concern that this bureaucratic emasculation of the HRC will further limit Sri Lankans' access to justice and ability to seek redress for human rights abuses.

Police Promotions:
Still Impartial?

15. (C) The National Police Commission (NPC), established to depoliticize the police personnel system, faced a similar fate after only four year of operation when its members' terms expired last November. NGO contacts active in the field of good governance have cited the creation of the NPC, which helped shield police from political retribution if they enforced the law, as critical to the promotion of free and fair elections in the country. Now, with no new Commissioners in place, the authority to promote and transfer policemen has moved back under the Inspector General of Police (IGP). Retired Deputy Inspector General of Police and NPC consultant Anton Jeyanathan told poloff, "No one is interested in solving the issue (of which party make the sixth and final nomination). . . . The government wants law enforcement and judiciary in their hands, so they can meddle. The damage to the NPC has been done. The IGP has transferred his own men into every office." Jeyanathan estimated the number of IGP-instigated transfers as upward of 300 out of approximately 440 police offices throughout the country. Echoing this contention, the Hong-Kong based Asian Human Rights Commission alleged that since the NPC expired in November "the Inspector General had begun taking on its powers, including the making of promotions and transfers. . . . thus making a mockery of (the NPC's) independent nature."

Comment

¶6. (C) Without a Constitutional Council in place, watchdog agencies like the Human Rights Commission and the National Police Commission are unable to function effectively. While the immediate cause of the delay may be political infighting, the Government seems to be in no hurry to rectify the problem. So far the President has shown no inclination to use his authority to intervene in the dispute--and risk alienating either the vociferous JVP on the one hand or give the TNA additional reason to accuse him of Sinhalese chauvinism on the other. The longer the President delays, however, the longer these agencies remain without any real power to monitor abuses. President Rajapaksa's preference is always to look for consensus rather than confrontation, but the delay has led to charges that the agencies' powerlessness and ineffectiveness are just fine with him.

LUNSTEAD